IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 18163 of 2007(K)

AGAINST THE ORDER IN CMA 2 2007 IN
CMA.1/2007 of SUB COURT, MUVATTUPUZHA
OS.441/2006 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER:

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1. SOMANATHAN NAIR, S/O. PARAMESWARAN PILLAI, PADMAVILASAM HOUSE, THRIKKARIYOOR VILLAGE, AYAKKADU KARA.

2. SAJI, D/O. SOMANADHAN NAIR, PADMAVILASAM HOUSE, THRIKKARIYOOR VILLAGE, AYAKKADU KARA.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS:

SASI @ KRISHNAN NAIR, S/O. NARAYANAN NAIR, THOTTAPPILLIL HOUSE, AYAKKADU KARA, THRIKKARIYOOR VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 18163 OF 2007 K

Dated this the 13th June, 2007.

JUDGMENT

The writ petition is filed against the common order passed in C.M.A.1 and 2/07 of the learned Subordinate Judge's Court, Muvattupuzha. This is a case where the tenant has filed a suit for injunction against the landlord from forcible dispossession and the contention of the landlord is that he is not a tenant of the entire premises but only a tenant of two rooms and therefore he is not entitled to get an injunction. The trial court, after considering the Commissioner's plan and report ordered that respondents 1 and 3 be restrained by an injunction from evicting the petitioner from the petition schedule building till the disposal of the suit and further that the petitioner is entitled for restoration of possession of the petition schedule building which has to be executed through the process of this court. Now, the learned counsel for the writ petitioner very vehemently challenges the order passed by the courts below for restoration of possession of the petition schedule building to the plaintiff in the suit. The tenant along with the suit moved an application for issuance of a commission and the commissioner inspected the property but as he was obstructed by the contesting

respondents he was only able to take note of the particulars available in the first front two rooms and even in spite of the directions of the court he could not inspect the remaining portion. Ultimately with the assistance of the police officials he again inspected the property four days after the first visit. On that day he was able to see that a gas stove but without a gas connection which is said to be there and belonging to the defendants in the suit. The commissioner opined that there is no evidence to show that anybody is living there. The commissioner was able to see marks of oil stain in the rooms and as the plaintiff in the suit is running something connected with automobile reported that fact as well. The court on enquiry prima facie was satisfied that the plaintiff was in possession of the property and therefore, it granted an injunction and also a mandatory order to put the tenants in possession of the property for the reason that they can be only evicted through due process of law. This was challenged before the appellate court as well and the appellate court on a re-appraisal of the entire materials found that the order of the learned Munsiff is sustainable and confirmed the order. Learned counsel appearing for the writ petitioner strongly canvasses before me to have a look into the second commissioner's report to

decide the case. At the outset I may like to point out the appointment of a second commissioner without setting aside the first commissioner's report is not legally correct and further as the second commissioner's inspection is much after the institution of the suit and as series of developments had taken place after the institution, it is not really possible to rely upon that to arrive at a factual conclusion as to the things that existed on the date of institution of the suit. Two authorities have judicially applied their mind and had come to the conclusion and had commented upon the conduct of the defendants and has arrived at the decision that the tenant is entitled to be in possession and that an act to throw him out through unlawful means cannot be resorted to and therefore gave direction by an order of injunction to restrain the defendants from interfering with the peaceful possession of the tenants and to put back the tenants into possession of the property so as to maintain status quo as on the date of suit because the courts below were convinced that the tenants were in possession of the entire building and not of two rooms as contended by the landlord. Under the supervisory jurisdiction of Art.227 of the Constitution, I feel there is nothing to interfere and the orders of the court are not perverse or tainted with

illegality or irregularity and therefore the writ petition lacks merits and is dismissed.

M.N.KRISHNAN
Judge

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